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In the Supreme Court of the United States

OCTOBER TERM, 1964.

No. 723.

LAKE BRADY SPIRITUALIST CAMP ASSOCIATION,

Petitioner,

vs.

MARGARET DISS DIX, *et al.*,

Respondents.

BRIEF OF RESPONDENTS
Opposing Petition for Writ of Certiorari.

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Petitioner is in complete error in stating "no opinions were rendered in the Court below" because the Common Pleas Court of Portage County, Ohio, rendered in writing an Opinion consisting of sixteen pages, too lengthy to be reprinted here.

COUNTER STATEMENT OF QUESTION PRESENTED.

In the courts below the question was one of validation of the 99-year leases which the petitioner maintained all through this lengthy litigation in the Ohio courts were void and of no force and effect. The suit was brought to protect the rights of the lessees and not to deprive lessor of any rights other than those it had already abandoned by its own conduct.

The question is why can't the State Courts protect the lessees when the evidence clearly showed that the covenants quoted on pp. 3 and 4 were not violated? Were not

the courts rendering equal protection which the Fourteenth Amendment specifically directs be done?

Can the petitioner now invoke the Fourteenth Amendment, having previously run the gamut of all the Courts in Ohio when it has:

1. Failed to raise the constitutional question now posed until the Application for Rehearing filed in the Court of Appeals;

2. Failed to prove violation of the lease covenants in the Trial Court;

3. Failed to present new evidence in the Court of Appeals on a Trial De Novo;

4. Failed to prove any declaration of or any forfeiture of the leases;

5. Instead the evidence showed it waived the conditions relied upon by its own course of conduct over forty (40) years.

The truth is that the petitioner had ample opportunity in this litigation, extending over five years, to prove the violation of the covenants of the leases on which were based its threats to cancel these leases by registered letters from the office of counsel Weingarten in Baltimore.

They failed to do so although they had two opportunities—first, in the trial court and, second, in the Trial De Novo in the Court of Appeals. It is notable that they elected *not* to introduce any additional or new evidence on their appeal from the Common Pleas Court and yet the appeal was on both law and fact.

ARGUMENT.

REASONS FOR DENIAL OF THE WRIT.

I. Petitioner Has Failed to Show That He Seasonably Raised the Federal Question in the State Courts.

A. Ohio requires that the constitutional question be presented and urged in the lower courts.

Petitioner does not mention in its brief that the first time the constitutional questions referred to in the Certificate of Judge Brown were raised in the Application for Rehearing filed in the Court of Appeals.

As stated by the Supreme Court of Ohio in *State, ex rel. King v. Shannon,* 170 Ohio St. 393, 165 N. E. 2d 642 (1960) (App. dis. 364 U. S. 337, reh. der. 364 U. S. 925):

> "It is an established rule of long standing in this state that a constitutional question, either in a civil or criminal action, can not be raised in the Supreme Court unless it was presented and urged in the courts below. Hoffman v. Staley, 92 Ohio St., 505, 112 N. E. 1084; Cuthbertson v. State, 106 Ohio St., 658, 140 N. E., 941; Zimmerman v. Morris Plan Bank of Cleveland, 113 Ohio St., 703, 150 N. E., 920; and Village of Clarington v. Althar, 122 Ohio St., 608, 174 N. E. 251."

B. In order to invoke this Court's jurisdiction under 28 U. S. C. par. 1257(3), the federal question must be seasonably raised in the state courts.

This Court has recently stated in *Edelman v. California,* 344 U. S. 357, 358 (1953):

> "It is clear that this Court is without power to decide whether constitutional rights have been violated when the federal questions are not seasonably raised in accordance with the requirements of state law."

Petitioner failed to present the constitutional questions in the lower courts, as required by Ohio law, hence

has failed to provide this Court with the basis for the exercise of its jurisdiction, under 28 U. S. C., par. 1257 (3). On that ground alone the petition for the writ of certiorari should be dismissed.

II. Petitioner Was Not Denied Any of Its Federal Rights.

The Petitioner refuses to narrow the principles involved to the facts in this case. No constitutional questions were presented in the trial of the case, nor were they brought up in the initial stages of the Court of Appeals action. They are brought up now to present a case that was not presented by the facts in the original action.

The events at issue in this case extended over a period of forty years. During that period the officers who were then in control of the Corporation permitted and acquiesced in certain practices as to the use of the leased premises.

In or about the year 1957, the management of the Association was taken over by the two individuals who started the present litigation. In an attempt to gain control of the leased properties, this new management arbitrarily and summarily declared that certain acts which had been permitted and acquiesced in by the old management were such violations of the leases as to justify the eviction of the lessees from homes that they had occupied over a period of years.

The holding of the Court was simply that a lessor, who over a long period of time has permitted defendant lessees to ignore various provisions of the leases and by so doing acquire certain vested rights and privileges, cannot at a later date, arbitrarily, without clear proof of such violations and without any formal declaration of forfeiture, maintain actions to evict them from their homes.

Both the trial and the appellate courts held the leases

to be valid. This decision and injunction are to prevent further evictions originating in or based upon the facts considered in this case, as to the defendant lessees and all other lessees in the same class. The decision and order of the Court provide no interference with the operation of the leases except in those instances that have become res adjudicata by this action.

CONCLUSION.

The points numbered and raised by the Petitioner under the heading "Reasons for Granting the Writ" are, except for No. 1, repetitious and not applicable to the present case because they ascribe to the decision of the Court of Appeals an interpretation which does not exist and, apparently, are stated for the sole purpose of supporting their Petition in this Court. For example, there is no holding by the lower court that the lessor cannot regain possession of the premises at the end of the terms, and the true meaning of that court's finding is based solely on the facts presented which occurred over the forty-year period.

Thus, the conclusions are as follows:

1. That the application of the Fourteenth Amendment is as much for the protection of the lessee as the lessor.

2. Petitioner did not seasonably raise any federal question until it applied for rehearing in the Court of Appeals.

3. No federal rights have been denied to the petitioner.

4. The petitioner has enjoyed the full use of all of the State Courts of Ohio with adequate opportunity to present its various appeals, of which it has availed itself, and it received the same protection of the laws of Ohio as is afforded all other citizens.

5. The petition here filed does not present any public, constitutional, or important questions but, on the contrary, clearly shows the situation to be simply a private controversy between Ohio citizens which has already been properly, legally and equitably decided by the Courts of Ohio. (See App. A & B.)

For the reasons above stated, this Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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APPENDIX A.

Order of the Supreme Court of Ohio Dismissing Appeal as of Right.

(Entered June 3, 1964.)

No. 38646.

THE STATE OF OHIO, CITY OF COLUMBUS.

MARGARET D. DIX, *et al.*,

Plaintiffs-Appellees,

vs.

LAKE BRADY SPIRITUALIST CAMP ASSN., *et al.*,

Defendants-Appellants.

This cause, here on appeal as of right from the Court of Appeals for Portage County, was heard in the manner prescribed by law, and, no motion to dismiss such appeal having been filed, the Court sua sponte dismisses the appeal for the reason that no substantial constitutional question exists herein.

It is further ordered that the appellees recover from the appellants their costs herein expended; that a mandate be sent to the Court of Common Pleas to carry this judgment into execution; and that a copy of this entry be certified to the Clerk of the Court of Appeals for Portage County for entry.

(Certificate of Clerk omitted.)

APPENDIX B.

Order of the Supreme Court of the State of Ohio Overruling Motion to Certify Record.

(Entered June 3, 1964.)

(Caption omitted.)

MOTION FOR AN ORDER DIRECTING THE COURT OF APPEALS FOR PORTAGE COUNTY TO CERTIFY ITS RECORD.

It is ordered by the Court that this motion is overruled.

Motion Fee, $20.00, paid by Mock & Mock.

(Certificate of Clerk omitted.)